

**STATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
45 Fremont Street, 21st Floor
San Francisco, CA 94105**

RH-01015532

December 21, 2001

**NOTICE OF PROPOSED REGULATORY ACTION AND
NOTICE OF PUBLIC HEARING
Accident Verification**

California Code of Regulations
Title 10, Chapter 5

The California Insurance Commissioner proposes to adopt the regulations described below after considering public comments, objections, or recommendations.

SUBJECT OF HEARING

A hearing will be initiated regarding proposed changes to California Code of Regulations, Title 10, Chapter 5, Subchapter 4.7, Article 4 Section 2632.13 of the California Code of Regulations.

AUTHORITY AND REFERENCE

The Insurance Commissioner proposes to adopt and amend the subject regulation under the authority of Insurance Code Sections 1861.02 and 1861.025; and CalFarm Insurance Company v. Deukemejian (1989) 48 Cal.3d 805 [258 Cal.Rptr. 161]; and Spanish Speaking Citizens Foundation, Inc. v. Low (2000) 85 Cal. App.4th 1179 [103 Cal.Rptr.2d 75]. The Commissioner's decision on the proposed changes to the regulations will implement, interpret and make specific provisions of Insurance Code Section 1861.02 and 1861.025.

HEARING DATES AND LOCATIONS

The Insurance Commissioner will hold a public hearing to permit all interested persons the opportunity to present statements or arguments either orally or in writing. The date, time and place for the public hearing is set forth below:

Date and time: **March 7, 2002 at 10:00 a.m.***

Location: **45 Fremont Street
22nd Floor Hearing Room
San Francisco, CA 94105**

*The hearings will continue on the date noted until all testimony has been completed or 4:30 p.m., whichever is earlier.

PRESENTATION OF WRITTEN AND/OR ORAL COMMENTS; CONTACT PERSONS

All persons are invited to present oral/ and or written comments at the scheduled hearing. Written comments not presented at the hearing must be addressed to the following contact person

California Department of Insurance
Attention: Michael Riordan
45 Fremont Street, 21st Floor
San Francisco, CA 94105
FAX: (415) 538-4226
riordanm@insurance.ca.gov

Questions regarding the hearing, comments, or the substance of the proposed action should be addressed to the above contact person. If the contact person above is not available inquires may be sent to the backup contact person.

California Department of Insurance
Attention: Elizabeth Mohr
45 Fremont Street, 21st Floor
San Francisco, CA 94105
FAX: (415) 538-4112
mohre@insurance.ca.gov

DEADLINE FOR WRITTEN COMMENTS

Any interested person may submit to the Commissioner written comments relevant to the proposed regulations. All written materials unless submitted at the hearing, must be received by the contact person at the address listed above, by no later than 5:00 p.m., March 7, 2002. Any comments received after that time will not be considered.

COMMENTS TRANSMITTED BY ELECTRONIC COMMUNICATION

The Commissioner will accept written comments transmitted by e-mail, provided they are sent to the following e-mail address: riordanm@insurance.ca.gov. The Commissioner will accept written comments transmitted by facsimile to the following facsimile number: (415) 904-5490. **Comments sent to other e-mail addresses or by facsimile machine will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline for written comments set forth.**

ACCESS TO HEARING ROOM

The public hearing rooms are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the agency representative (listed above) for the hearings in order to make special arrangements, if necessary.

ADVOCACY OR WITNESS FEES

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of subchapter 4.5, title 10 of the California Code of Regulations, in connection with their participation in this matter. Persons interested in inquiring about the appropriate procedures should contact the Office of the Public Advisor at the following address:

California Department of Insurance
Office of the Public Advisor
300 Capital Mall, 17th Floor
Sacramento, CA 95814
(916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person for this hearing, listed above. Please contact the Office of the Public Advisor for further information.

INFORMATIVE DIGEST/ POLICY STATEMENT OVERVIEW

California Insurance Code Section 1861.02(c) provides that “[t]he absence of prior automobile insurance coverage, in and of itself, shall not be a criterion for determining eligibility for a Good Driver Discount policy, or generally for automobile rates, premiums, or insurability.” However, under California Insurance Code Section 1861.02(a), an insurer must base rates on a policyholder’s driving safety record. Accident information provided by a prior insurer is one way to verify an applicant’s driving safety record. But this information could potentially be used, in effect, to impose a prior insurance requirement on new insurance applicants.

Nothing in the California Insurance Code or the Department’s regulations currently prohibit insurers from seeking accident verification or loss information. In fact, Title 10, California Code of Regulations, Section 2632.5(c)(1) defines driving safety record as the public record of traffic violation convictions and principally at-fault accidents determined in accordance with Section 2632.13. Sections 2632.13(f) and (g) permit insurers to investigate whether a driver was principally at fault in an accident, including seeking that information from another insurer.

However, insurers have begun to use these and other provisions in ways that arguably impose a “prior insurance” requirement on new applicants. For example, some insurers require that applicants provide written documentation from the applicant’s current insurer regarding prior accident history or a renewal offer from the applicant’s current insurer indicating accident record experience. Insurers have required applicants to have previously been insured with a subscribing loss underwriting exchange carrier, e.g., C.L.U.E.

Although insurers have permitted applicants other ways to verify their prior accident history, these options are not realistically available for most applicants. Other available options typically have included:

- Written documentation from a military commanding officer that the applicant was stationed overseas and was not principally at fault in an accident.
- Written documentation from the applicant's supervisor in the Peace Corps, Foreign Service, or similar organization that the applicant was not principally at fault in an accident.
- Written documentation that the applicant did not own or have regular access to a vehicle.
- Written medical documentation that the applicant did not operate a vehicle.
- Written documentation from the applicant's employer that the applicant was furnished a company car for business and personal use and was not principally at fault in an accident.
- Some insurers specifically prohibited use of Motor Vehicle Records to verify accident record.

As a result, the accident verification requirements appear to have been used to require proof of prior insurance in violation of California Insurance Code Section 1861.02(c).

The Commissioner proposes to amend California Code of Regulations, title 10 section 2632.13. The proposed amendment will prohibit insurers from requiring applicants provide written documentation from the insured's prior insurer and require them to accept the insured's certification of accident record experience.

PUBLIC DISCUSSIONS OF PROPOSED REGULATIONS

A pre-notice workshop, pursuant to Government Code Section 11346.45, is not required to implement the proposed regulation, because the issue addressed is not so complex that it cannot easily be reviewed during the comment period. Notwithstanding the lack of complexity of the issue, prior to publishing public notice, the California Department of Insurance mailed provided notice pursuant to CIC §12921.7 to all persons who previously requested mailed notice of proposed regulatory action. The California Department of Insurance utilized the comments provided pursuant to the notice formulation of the proposed regulation.

MANDATE ON LOCAL AGENCIES AND SCHOOL DISTRICT OR COST WHICH MUST BE REIMBURSED PURSUANT TO GOVERNMENT CODE SECTION 17500 THROUGH 17630

The proposed regulation does not impose any mandate on local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement. There are no costs to local agencies or school districts from the proposed regulations, and the proposed regulation will not affect funding to the State.

COST OR SAVINGS TO ANY STATE AGENCY

The Commissioner has determined that there will be no cost or savings to local agencies or school districts from the proposed regulations, and that the proposed regulation will not affect funding to the State.

OTHER NON DISCRETIONARY COSTS OR SAVINGS IMPOSED UPON LOCAL AGENCIES

None

COST OR SAVINGS IN FEDERAL FUNDING TO THE STATE

None

COMPARABLE FEDERAL STATUTES OR REGULATIONS

None

COST IMPACTS ON REPRESENTATIVE PRIVATE PERSONS OR BUSINESS

The Department is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

ECONOMIC IMPACT DIRECTLY AFFECTING BUSINESS, INCLUDING THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE WITH BUSINESSES IN OTHER STATES

The Commissioner has made a determination that the proposed amendment does not impact business. Proposition 103 states that prior insurance cannot be used as a rating factor. This regulation enforces that requirement.

EFFECT ON JOBS IN CALIFORNIA

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new business, the elimination of new business, and the expansion of business currently operating in the state. The Commissioner does not foresee that the proposed regulations will have any impact on any of the above but invites interested parties to comment on this issue.

IMPACT ON HOUSING COSTS

The matter proposed herein will have no impact on housing costs.

CONSIDERATION OF ALTERNATIVES

Pursuant to Government Code Section 11346.5(a)(13), the Commissioner must determine that no reasonable alternative considered by the Commissioner, or that has otherwise been identified and brought to the attention of the Commissioner, would be more effective in carrying out the purpose for the proposed regulations, and that no alternative would be as effective or less burdensome to private persons or businesses directly affected than these regulations. The purpose of the proposed regulation is to implement a statutory mandate. To date, no reasonable alternative to the proposed regulations is apparent. The Commissioner, however, invites public comment on alternatives to the regulations.

IMPACT ON SMALL BUSINESS

The matters proposed herein will affect insurance companies, and therefore not affect small business. (Govt. Code Section 11342.610, subd. (b)(2).)

AVAILABILITY OF TEXT OF THE RULEMAKING FILE

The Insurance Commissioner has prepared an initial statement that sets forth the reasons for the proposed action. The Insurance Commissioner also has available all the information upon which this proposed action is based, and the express terms of the proposed action.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information contained in the rulemaking file, is available for inspection and copying **by prior appointment** at 45 Fremont Street, 21st Floor, San Francisco, California, 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday. Written requests for the rulemaking file or substantive or general questions regarding this proceeding should be directed to the contact persons listed above.

FINAL STATEMENT OF REASONS

Upon written or e-mail request, the final statement of reasons will be made available for inspection and copying once it has been prepared. Written requests for the final statement of reasons should be directed to the contact person listed above.

AUTOMATIC MAILING

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Department's mailing list.

WEB ACCESS

A copy of this Notice, the Initial Statement of Reasons, and the Text of the proposed regulations can be obtained on the Department's Web site at www.insurance.ca.gov. Near the top of the page, you will see the major heading "Protecting Consumers." In this section, scroll down until you see the subheading "BE INFORMED." Click on the nearby "Search for Proposed Regulations" link. When the search field appears, enter "RH 01015532" (the Department's regulation file number for these regulations). Alternatively, search for the California Insurance Code Section that the regulations implement (for instance, "1861.02(c)"), or search by the key word (accident verification for example.). Then click on the "Submit" button to display links to the various filing documents. For those without Web access, contact Michael Riordan at the address and FAX above, or by telephone at (415) 538-4226.

AVAILABILITY OF CHANGED OR MODIFIED TEXT

If the regulations adopted by the Department differ but are sufficiently related to the action proposed, they will be made available to the public for at least 15 days prior to the date of adoption.

December 21, 2001

HARRY W. LOW
Insurance Commissioner

By _____
Michael Riordan
Staff Counsel